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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 CURTIS J. WILLIAMS,

11 Plaintiff,

No. CIV S-05-0164 JAM EFB P

12 vs.

13 R. W. SANDHAM, et al.,

14 Defendants.

ORDER AND
FINDINGS AND RECOMMENDATIONS

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16 Plaintiff is a prisoner without counsel suing for alleged civil rights violations. *See* 42
17 U.S.C. § 1983. Currently pending are defendants motions to dismiss for failure to prosecute. As
18 defendants correctly point out in their motions, plaintiff has failed to timely file a pretrial
19 statement in accord with the district judge's September 30, 2010 order.

20 A party's failure to comply with any order or with the Local Rules "may be grounds for
21 imposition of any and all sanctions authorized by statute or Rule or within the inherent power of
22 the Court." Local Rule 11-110. The court may recommend that an action be dismissed with or
23 without prejudice, as appropriate, if a party disobeys an order or the Local Rules. *See Ferdik v.*
24 *Bonzelet*, 963 F.2d 1258, 1252 (9th Cir. 1992) (district court did not abuse discretion in
25 dismissing *pro se* plaintiff's complaint for failing to obey an order to re-file an amended
26 complaint to comply with Federal Rules of Civil Procedure); *Carey v. King*, 856 F.2d 1439,

1 1440-41 (9th Cir. 1988) (dismissal for *pro se* plaintiff's failure to comply with local rule
2 regarding notice of change of address affirmed).

3 On July 7, 2005, the court directed the Clerk of the Court to send plaintiff a copy of the
4 Local Rules of this Court, and explained that failure to comply with the Local Rules or any order
5 of this court may result in a recommendation of dismissal. Furthermore, on January 6, 2006, the
6 court issued a scheduling order stating that in the event this action survived any dispositive
7 motions that were filed, the parties would be required to file pretrial statements pursuant to then
8 Local Rule 16-281 and further admonished plaintiff that "failure to file a pretrial statement may
9 result in the imposition of sanctions, including dismissal with prejudice for failure to prosecute
10 or judgment by default." *See* Order at Dckt. No. 28.

11 The September 30, 2010 order required plaintiff to file his pretrial statement within thirty
12 days. The thirty-day period has passed and plaintiff has not filed a pretrial statement or
13 otherwise responded to that order. Accordingly, defendants need not file a pretrial statement and
14 the undersigned recommends this action be dismissed.

15 Accordingly, it is hereby ORDERED that:

- 16 1. Defendants are relieved of their obligation to file a pretrial statement; and
17 2. The hearings on their motions to dismiss are vacated.

18 Further, it is hereby RECOMMENDED that:

- 19 1. This action be dismissed for failure to prosecute. *See* Fed. R. Civ. P. 16(f); Fed. R.
20 Civ. P. 41(b); Local Rule 110;
21 2. Defendants' motions to dismiss be denied as moot; and
22 3. The Clerk be directed to close the case.

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after
25 being served with these findings and recommendations, any party may file written objections
26 with the court and serve a copy on all parties. Such a document should be captioned "Objections

1 to Magistrate Judge's Findings and Recommendations." Failure to file objections within the
2 specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158
3 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

4 DATED: December 6, 2010.

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6 EDMUND F. BRENNAN
7 UNITED STATES MAGISTRATE JUDGE
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